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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,584	01/18/2002	Parimal Vadhar	D-43489-01 US	9718

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/051,584

Applicant(s)

VADHAR ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 16-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 21, 2004 has been entered. Claims 23 and 24 have been added. Claims 6-10,14-24 remain pending in the application.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Pockat et al. (US 5023121) as evidenced by Genske et al. (US 5407751).

4. Pockat et al. teach placing a food product on a bottom web that may include 60-80% EVA and 10% PP and sealing a top web with an ethylene/alpha-olefin copolymer, such as LDPE and LLDPE, to the bottom web that is attached to a support member, such as nylon (or polyamide), and drawing a vacuum to form a vacuum skin package that provides an easy peel seal (Column 3, line 49 to Column 3, line 28, Column 5, line 5 to column 6, line 22, the top web layers are defined in Column 7, lines 64-68 and Claim

Art Unit: 1761

2, the support layer is defined in Table 1, claim 1 and shown in Figure 4). All of these materials are microwaveable evidenced by Genske et al. who also teach easy peel lid stock for microwaveable structures (Abstract, Column 2, lines 48-57, Coplumn 4, line 20 to Column 6, line 61).

5. Although the claim recites "a sealant layer consisting essentially of PP and EVA", the claim further recites "the bottom web of the vacuum skin package comprises". Thus, the bottom web may comprises more than one "sealant layers", and since Pockat et al. teach the sealant resins may be added together or separately (Column 5, lines 25-35), Pockat et al. anticipates that claim.

### ***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 6-9, 16-19, 21, 22 are rejected 35 U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) as evidenced by Genske et al. (US 5407751) in view of Hamazaki et al. (UJP 01-096276 A).

8. Regarding claims 6-9, 16-19, Pockat et al. teach placing a sausage on a bottom web that may include 60-80% EVA and 10% PP and sealing a top web with an ethylene/alpha-olefin copolymer, such as LDPE and LLDPE, and an oxygen barrier such as nylon (i.e. polyamide) as recited in claims 9 and 19, to the bottom web that is attached to a support member in such as nylon (or polyamide) as recited in claim 7 and

Art Unit: 1761

17 and an oxygen barrier layer such as EVOH as recited in claim 8 and 18, and drawing a vacuum to form a vacuum skin package that provides an easy peel seal (Column 3, line 49 to Column 3, line 28, Column 5, line 5 to column 6, line 22, the top web layers are defined in Column 7, lines 64-68 and Claim 2, the support layer is defined in Table 1, claim 1 and shown in Figure 4). All of these materials are microwaveable, as recited in claims 6 and 16, evidenced by Genske et al. who also teach easy peel lid stock for microwaveable structures (Abstract, Column 2, lines 48-57, Coplumn 4, line 20 to Column 6, line 61). However, Pockat et al. are silent in teaching the bottom web comprises a sealant layer of greater than 10% PP, such as 20-40% PP, in the easy to peel sealant bottom web as recited in claims 6, 8, 16, 18.

9. Hamazaki et al. also teach an easy to peel sealing material for food packaging that comprises EVA and PP, but further teaches 60% EVA and 20-35% PP, and 5% of another component will not only provide an easy peel, but will also provide sealing strength over a wide range of temperatures, and adhesives forces do not diminish even when heated in hot water (See JPO and Derwent Abstracts). Therefore, it would have been obvious to modify Pockat et al. and include a sealant comprising 60% EVA and 20-35% PP since Hamazaki et al. teach such blends not only provide an easy peel but provide good sealing strength over a wide range of temperatures, as well as heating in hot water.

10. Regarding claims 21 and 22, Pockat et al. teach the package comprises sausages, but are silent in teaching whether or not they are cooked sausages.

However, examiner takes official notice that it was notoriously well known that sausages

Art Unit: 1761

were packaged in either raw or cooked form, depending on the intended preparation time and preparation method required by the consumer. Therefore to modify Pockat et al. and include "cooked" sausage would have been obvious, since providing either a cooked or raw sausage in package would depend on the intended preparation time and preparation method required by the consumer.

11. Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751) in view of Hamazaki et al. (UJP 01-096276 A) as applied to claims 6-9, 16-19, 21, 22 above, further in view of Shibata et al. (US 4429079).

12. Pockat et al. teach the top web with a sealant layer comprising ethylene/alpha olefin copolymer, such as LDPE, and an outer gas-barrier layer of polyamide, but are silent in teaching ethylene/octene-1 polymer. Shibata et al. also teaches adhesive layers compatible with polyamides for food packages, but teaches some low-density polyethylenes have shown various problems such as a very narrow seal temperature range, poor seal strength, and poor flexural resistance. Shibata et al. teach a preferred ethylene/alpha olefin copolymer comprises ethylene/octene-1 copolymer because it does not show the problems encountered with conventional low-density polyethylenes (Column 1, line 15 to Column 2, line 20). Therefore, it would have been obvious to modify Pockat et al. and include ethylene/octene-1 polymer since Shibata et al. teach ethylene/octene-1 copolymer overcomes the problems with sealing and flexural properties of conventional low density ethylene/alpha olefin copolymers.

13. Claims 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751), as applied to claim 23 above further in view of Sugimoto (JP 2001-310443).

14. Pockat et al. teach an easily peelable package that includes microwaveable material, as evidenced by Genske et al, but are silent in teaching the peel strength before microwaving should be at least 4 psi and after less than 2.5 psi.

15. Sugimoto a microwaveable food package with good thermal bonding and that is easily peelable (Abstract, Paragraphs 1-6,30 of English Translation, Paragraphs 9-15, 30,Example 1 in Paragraph 31 in light of Table 1) wherein the peel strength before cooking (i.e. at 23°C) is at least 4 lb/in (i.e. 18-19N/ 15 mm for Example 1 in table 1) and less than 2.5 lb/in (i.e.0.5-0.7 N/15 mm for Example 1 in Table 1 ) after cooking (i.e. at 95°C) . Therefore, it would have been obvious to further modify the composition of the sealant layer of Pockat et al. such that one would obtain a peel strength before microwave cooking of at least 4 psi and after cooking less than 2.5 psi, since Sugimoto teaches these peel strengths on a microwaveable food package are considered good thermal bonding, but will provide an easily peel.

### ***Response to Arguments***

16. Applicant's arguments, filed December 21, 2004 with respect to the rejections of claims 6-9,16-19 under 35 U.S.C. 102(b) as being anticipated by Pockat et al. (US 5023121) as evidenced by Genske et al. (US 5407751), claims 10 and 20 under 35

Art Unit: 1761

U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751), further in view of Shibata et al. (US 4429079), and claims 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over Pockat et al. (US 5023121) evidenced by Genske et al. (US 5407751) have been fully considered and are persuasive for the reason that Pockat et al. do not teach the currently recited 20-40% PP. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

17. Additionally, with respect to Genske et al. in particular, Applicant states Genske et al. teach away from dissimilar sealants on the top/bottom webs. However, it is noted in both the rejections discussed above, as well as the current rejection of claim 23 made under 35 U.S.C. 102(b), Genske et al. are merely relied on as evidenced of the microwaveable characteristics of the materials taught by Pockat et al.

18. Applicant's arguments, filed December 21, 2004 with respect to the rejection of claims 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 4925684) in view of Fisher et al. (US 4911938) have been fully considered and are persuasive, since the Simon does not teach a vacuum skin package, as currently positively recited. Therefore, the rejection has been withdrawn. Accordingly, claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 4925684) in view of Fisher et al. (US 4911938 further in view of Sugimoto (JP 2001-310443) has also been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.



**Conclusion**

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert Madsen  
Examiner  
Art Unit 1761

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